

David Salsman, a sole proprietor d/b/a Concept Landscapes and Dean Tabish. Case 32-CA-12766 (formerly 20-CA-24862)

March 10, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by Dean Tabish, an individual, on August 31, 1992, the General Counsel of the National Labor Relations Board issued a complaint against David Salsman, a sole proprietor d/b/a Concept Landscapes, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 8, 1993, the General Counsel filed a Motion for Summary Judgment. On February 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated January 21, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by the close of business January 28, 1993, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a sole proprietorship with an office and place of business in Fairfield, California, has been engaged in providing landscaping services on commer-

cial construction projects. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, sold and shipped goods or provided services valued in excess of \$50,000 directly to customers or business enterprises who meet one of the Board's jurisdictional standards, other than the direct inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about August 20, 1992, the Respondent discharged certain employees named below because they engaged in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including refusing to work in protest over a wage dispute, and, since then, it has failed and refused, and continues to fail and refuse, to reinstate them to their former positions of employment. The affected employees are:

Scott Tabish	Randall Lee Tryon
Fernando	Juan Baeza
Dominquez	
Mike Catanesi	Francisco Torres
Jorge Negreta	Tony (last name currently unknown)

We find that by engaging in the above conduct, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has violated Section 8(a)(1) of the Act, as alleged.

CONCLUSION OF LAW

By discharging its employees because they engaged in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of

the discrimination against them, with backpay to be computed as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, David Salsman, a sole proprietor d/b/a Concept Landscapes, Fairfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including collectively refusing to work in protest over a wage dispute.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer the employees listed below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

Scott Tabish	Randall Lee Tryon
Fernando	Juan Baeza
Dominquez	
Mike Catanesi	Francisco Torres
Jorge Negreta	Tony (last name currently unknown)

(b) Expunge from its files any and all references to the unlawful discharge of the above employees, and notify said employees, in writing, that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Fairfield, California, copies of the attached notice marked "Appendix."¹ Copies of

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including collectively refusing to work in protest over a wage dispute.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer the individuals named below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

Scott Tabish	Randall Lee Tryon
Fernando	Juan Baeza
Dominquez	
Mike Catanesi	Francisco Torres
Jorge Negreta	Tony (last name currently unknown)

WE WILL notify each of the above employees that we have removed from our files any reference to their discharge and that we will not use the discharges against them in any way.

DAVID SALSMAN, A SOLE PROPRIETOR
D/B/A CONCEPT LANDSCAPES